IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53642

FILED

OCT 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On January 25, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of trafficking in a controlled substance and one count of possession of a controlled substance. The district court sentenced appellant to serve a term of 25 years for the trafficking count and a concurrent term of 4 years for the possession count in the Nevada State Prison. The district court further stated that appellant was not eligible for parole prior to serving 25 years. No direct appeal was filed. Appellant unsuccessfully sought relief from his conviction by way of a post-conviction petition for a writ of habeas corpus. Porter v. State, Docket No. 30767 (Order Dismissing Appeal, August 25, 1999).

On February 17, 2009, appellant filed a proper person motion to correct an illegal sentence and a motion for the appointment of counsel

in the district court. The State opposed the motions. On March 24, 2009, the district court denied appellant's motions. This appeal followed.[1]

In his motion, appellant claimed that his sentence was illegal because the Department of Corrections failed to apply statutory credits to his sentence. Appellant further claimed that he was deprived of a parole hearing.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal. 1983 Nev. Stat., ch. 111, § 2, at 287 (providing for a term of life or a definite term of not less than 25 years) (NRS 453.3385(3)). Pursuant to NRS 453.3405, appellant is not eligible for parole until he has actually served the mandatory minimum term prescribed by NRS 453.3385—in this case, 25 years. 1983 Nev. Stat., ch. 111, § 5, at 288. Appellant may not challenge the computation of time served in a motion to correct an illegal sentence, but rather, such a challenge must be filed in a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(c).

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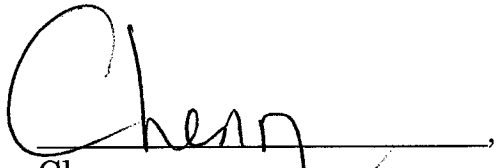
[1]To the extent that appellant appealed the denial of his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion in denying the motion.

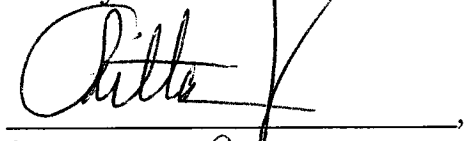
Appellant failed to demonstrate that the district court was not a competent court of jurisdiction. Therefore, we affirm the order of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

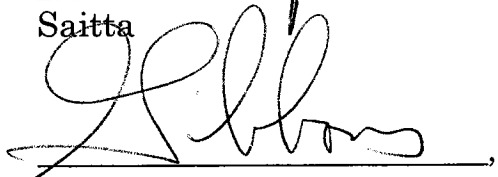
ORDER the judgment of the district court AFFIRMED.[2]



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Jennifer Togliatti, District Judge
Alexander Porter
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[2]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.